FIRST DIVISION

[G.R. No. 154127. December 8, 2003]

ROMEO C. GARCIA, *petitioner, vs.* DIONISIO V. LLAMAS, *respondent.*

D E C I S I O N

PANGANIBAN, *J.:*

Novation cannot be presumed. It must be clearly shown either by the express assent of the parties or by the complete incompatibility between the old and the new agreements. Petitioner herein fails to show either requirement convincingly; hence, the summary judgment holding him liable as a joint and solidary debtor stands.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to nullify the November 26, 2001 Decision[2] and the June 26, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 60521. The appellate court disposed as follows:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment appealed from, insofar as it pertains to [Petitioner] Romeo Garcia, must be, as it hereby is, **AFFIRMED**, subject to the modification that the award for attorneys fees and cost of suit is **DELETED**. The portion of the judgment that pertains to x x x Eduardo de Jesus is **SET ASIDE** and **VACATED**. Accordingly, the case against x x x Eduardo de Jesus is **REMANDED** to the court of origin for purposes of receiving *ex parte* [Respondent] Dionisio Llamas evidence against x x x Eduardo de Jesus.[4]

The challenged Resolution, on the other hand, denied petitioners Motion for Reconsideration.

The Antecedents

The antecedents of the case are narrated by the CA as follows:

This case started out as a complaint for sum of money and damages by x x x [Respondent] Dionisio Llamas against x x x [Petitioner] Romeo Garcia and Eduardo de Jesus. Docketed as Civil Case No. Q97-32-873, the complaint alleged that on 23 December 1996[,] [petitioner and de Jesus] borrowed ₱400,000.00 from [respondent]; that, on the same day, [they] executed a promissory note wherein they bound themselves jointly and severally to pay the loan on or before 23 January 1997 with a 5% interest per month; that the loan has long been overdue and, despite repeated demands, [petitioner and de Jesus] have failed and refused to pay it; and that, by reason of the[ir] unjustified refusal, [respondent] was compelled to engage the services of counsel to whom he agreed to pay 25% of the sum to be recovered from [petitioner and de Jesus], plus ₱2,000.00 for every appearance in court. Annexed to the complaint were the promissory note above-mentioned and a demand letter, dated 02 May 1997, by [respondent] addressed to [petitioner and de Jesus].

Resisting the complaint, [Petitioner Garcia,] in his [Answer,] averred that he assumed no liability under the promissory note because he signed it merely as an accommodation party for x x x de Jesus; and, alternatively, that he is relieved from any liability arising from the note inasmuch as the loan had been paid by x x x de Jesus by means of a check dated 17 April 1997; and that, in any event, the issuance of the check and [respondents] acceptance thereof novated or superseded the note.

[Respondent] tendered a reply to [Petitioner] Garcias answer, thereunder asserting that the loan remained unpaid for the reason that the check issued by x x x de Jesus bounced, and that [Petitioner] Garcias answer was not even accompanied by a certificate of non-forum shopping. Annexed to the reply were the face of the check and the reverse side thereof.

For his part, x x x de Jesus asserted in his [A]nswer with [C]ounterclaim that out of the supposed ₱400,000.00 loan, he received only ₱360,000.00, the ₱40,000.00 having been advance interest thereon for two months, that is, for January and February 1997; that[,] in fact[,] he paid the sum of ₱120,000.00 by way of interests; that this was made when [respondents] daughter, one Nits Llamas-Quijencio, received from the Central Police District Command at Bicutan, Taguig, Metro Manila (where x x x de Jesus worked), the sum of ₱40,000.00, representing the peso equivalent of his accumulated leave credits, another ₱40,000.00 as advance interest, and still another ₱40,000.00 as interest for the months of March and April 1997; that he had difficulty in paying the loan and had asked [respondent] for an extension of time; that [respondent] acted in bad faith in instituting the case, [respondent] having agreed to accept the benefits he (de Jesus) would receive for his retirement, but [respondent] nonetheless filed the instant case while his retirement was being processed; and that, in defense of his rights, he agreed to pay his counsel ₱20,000.00 [as] attorneys fees, plus ₱1,000.00 for every court appearance.

During the pre-trial conference, x x x de Jesus and his lawyer did not appear, nor did they file any pre-trial brief. Neither did [Petitioner] Garcia file a pre-trial brief, and his counsel even manifested that he would no [longer] present evidence. Given this development, the trial court gave [respondent] permission to present his evidence *ex parte* against x x x de Jesus; and, as regards [Petitioner] Garcia, the trial court directed [respondent] to file a motion for judgment on the pleadings, and for [Petitioner] Garcia to file his comment or opposition thereto.

Instead, [respondent] filed a [M]otion to declare [Petitioner] Garcia in default and to allow him to present his evidence *ex parte*. Meanwhile, [Petitioner] Garcia filed a [M]anifestation submitting his defense to a judgment on the pleadings. Subsequently, [respondent] filed a [M]anifestation/[M]otion to submit the case for judgement on the pleadings, withdrawing in the process his previous motion. Thereunder, he asserted that [petitioners and de Jesus] solidary liability under the promissory note cannot be any clearer, and that the check issued by de Jesus did not discharge the loan since the check bounced.[5]

On July 7, 1998, the Regional Trial Court (RTC) of Quezon City (Branch 222) disposed of the case as follows:

WHEREFORE, premises considered, judgment on the pleadings is hereby rendered in favor of [respondent] and against [petitioner and De Jesus], who are hereby ordered to pay, jointly and severally, the [respondent] the following sums, to wit:

1) ₱400,000.00 representing the principal amount plus 5% interest thereon per month from January 23, 1997 until the same shall have been fully paid, less the amount of ₱120,000.00 representing interests already paid by x x x de Jesus;

2) ₱100,000.00 as attorneys fees plus appearance fee of ₱2,000.00 for each day of [c]ourt appearance, and;

3) Cost of this suit.[6]

Ruling of the Court of Appeals

The CA ruled that the trial court had erred when it rendered a judgment on the pleadings against De Jesus. According to the appellate court, his Answer raised genuinely contentious issues. Moreover, he was still required to present his evidence *ex parte*. Thus, respondent was not *ipso facto* entitled to the RTC judgment, even though De Jesus had been declared in default. The case against the latter was therefore remanded by the CA to the trial court for the *ex parte* reception of the formers evidence.

As to petitioner, the CA treated his case as a summary judgment, because his Answer had failed to raise even a single genuine issue regarding any material fact.

The appellate court ruled that no novation -- express or implied -- had taken place when respondent accepted the check from De Jesus. According to the CA, the check was issued precisely to pay for the loan that was covered by the promissory note jointly and severally undertaken by petitioner and De Jesus. Respondents acceptance of the check did not serve to make De Jesus the sole debtor because, *first*, the obligation incurred by him and petitioner was joint and several; and, *second*, the check -- which had been intended to extinguish the obligation -- bounced upon its presentment.

Hence, this Petition.[7]

Issues

Petitioner submits the following issues for our consideration:

I

Whether or not the Honorable Court of Appeals gravely erred in not holding that novation applies in the instant case as x x x Eduardo de Jesus had expressly assumed sole and exclusive liability for the loan obligation he obtained from x x x Respondent Dionisio Llamas, as clearly evidenced by:

a) Issuance by x x x de Jesus of a check in payment of the full amount of the loan of ₱400,000.00 in favor of Respondent Llamas, although the check subsequently bounced[;]

b) Acceptance of the check by the x x x respondent x x x which resulted in [the] substitution by x x x de Jesus or [the superseding of] the promissory note;

c) x x x de Jesus having paid interests on the loan in the total amount of ₱120,000.00;

d) The fact that Respondent Llamas agreed to the proposal of x x x de Jesus that due to financial difficulties, he be given an extension of time to pay his loan obligation and that his retirement benefits from the Philippine National Police will answer for said obligation.

II

Whether or not the Honorable Court of Appeals seriously erred in not holding that the defense of petitioner that he was merely an accommodation party, despite the fact that the promissory note provided for a joint and solidary liability, should have been given weight and credence considering that subsequent events showed that the principal obligor was in truth and in fact x x x de Jesus, as evidenced by the foregoing circumstances showing his assumption of sole liability over the loan obligation.

III

Whether or not judgment on the pleadings or summary judgment was properly availed of by Respondent Llamas, despite the fact that there are genuine issues of fact, which the Honorable Court of Appeals itself admitted in its Decision, which call for the presentation of evidence in a full-blown trial.[8]

Simply put, the issues are the following: 1) whether there was novation of the obligation; 2) whether the defense that petitioner was only an accommodation party had any basis; and 3) whether the judgment against him -- be it a judgment on the pleadings or a summary judgment -- was proper.

The Courts Ruling

The Petition has no merit.

First Issue: *Novation*

Petitioner seeks to extricate himself from his obligation as joint and solidary debtor by insisting that novation took place, either through the substitution of De Jesus as sole debtor or the replacement of the promissory note by the check. Alternatively, the former argues that the original obligation was extinguished when the latter, who was his co-obligor, paid the loan with the check.

The fallacy of the second (alternative) argument is all too apparent. The check could not have extinguished the obligation, because it bounced upon presentment. By law,[9] the delivery of a check produces the effect of payment only when it is encashed.

We now come to the main issue of whether novation took place.

Novation is a mode of extinguishing an obligation by changing its objects or principal obligations, by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor.[10] Article 1293 of the Civil Code defines novation as follows:

> Art. 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him rights mentioned in articles 1236 and 1237.

In general, there are two modes of substituting the person of the debtor: (1) *expromision* and (2) *delegacion*. In *expromision*, the initiative for the change does not come from -- and may even be made without the knowledge of -- the debtor, since it consists of a third persons assumption of the obligation. As such, it logically requires the consent of the third person and the creditor. In *delegacion*, the debtor offers, and the creditor accepts, a third person who consents to the substitution and assumes the obligation; thus, the consent of these three persons are necessary.[11] Both modes of substitution by the debtor require the consent of the creditor.[12]

Novation may also be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former. It is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement.[13] Whether extinctive or modificatory, novation is made either by changing the object or the principal conditions, referred to as objective or real novation; or by substituting the person of the debtor or subrogating a third person to the rights of the creditor, an act known as subjective or personal novation.[14] For novation to take place, the following requisites must concur:

1) There must be a previous valid obligation.

2) The parties concerned must agree to a new contract.

3) The old contract must be extinguished.

4) There must be a valid new contract.[15]

Novation may also be express or implied. It is express when the new obligation declares in unequivocal terms that the old obligation is extinguished. It is implied when the new obligation is incompatible with the old one on every point.[16] The test of incompatibility is whether the two obligations can stand together, each one with its own independent existence.[17]

Applying the foregoing to the instant case, we hold that no novation took place.

The parties did not unequivocally declare that the old obligation had been extinguished by the issuance and the acceptance of the check, or that the check would take the place of the note. There is no incompatibility between the promissory note and the check. As the CA correctly observed, the check had been issued precisely to answer for the obligation. On the one hand, the note evidences the loan obligation; and on the other, the check answers for it. Verily, the two can stand together.

Neither could the payment of interests -- which, in petitioners view, also constitutes novation[18] -- change the terms and conditions of the obligation. Such payment was already provided for in the promissory note and, like the check, was totally in accord with the terms thereof.

Also unmeritorious is petitioners argument that the obligation was novated by the substitution of debtors. In order to change the person of the debtor, the old one must be expressly released from the obligation, and the third person or new debtor must assume the formers place in the relation.[19] Well-settled is the rule that novation is never presumed.[20] Consequently, that which arises from a purported change in the person of the debtor must be clear and express.[21] It is thus incumbent on petitioner to show clearly and unequivocally that novation has indeed taken place.

In the present case, petitioner has not shown that he was expressly released from the obligation, that a third person was substituted in his place, or that the joint and solidary obligation was cancelled and substituted by the solitary undertaking of De Jesus. The CA aptly held:

> x x x. Plaintiffs acceptance of the bum check did not result in substitution by de Jesus either, the nature of the obligation being solidary due to the fact that the promissory note expressly declared that the liability of appellants thereunder is joint and [solidary.] Reason: under the law, a creditor may demand payment or performance from one of the solidary debtors or some or all of them simultaneously, and payment made by one of them extinguishes the obligation. It therefore follows that in case the creditor fails to collect from one of the solidary debtors, he may still proceed against the other or others. x x x [22]

Moreover, it must be noted that for novation to be valid and legal, the law requires that the creditor expressly consent to the substitution of a new debtor.[23] Since novation implies a waiver of the right the creditor had before the novation, such waiver must be express.[24] It cannot be supposed, without clear proof, that the present respondent has done away with his right to exact fulfillment from either of the solidary debtors.[25]

More important, De Jesus was not a third person to the obligation. From the beginning, he was a joint and solidary obligor of the ₱400,000 loan; thus, he can be released from it only upon its extinguishment. Respondents acceptance of his check did not change the person of the debtor, because a joint and solidary obligor is required to pay the entirety of the obligation.

It must be noted that in a solidary obligation, the creditor is entitled to demand the satisfaction of the whole obligation from any or all of the debtors.[26] It is up to the former to determine against whom to enforce collection.[27] Having made himself jointly and severally liable with De Jesus, petitioner is therefore liable[28] for the entire obligation.[29]

Second Issue:
Accommodation Party

Petitioner avers that he signed the promissory note merely as an accommodation party; and that, as such, he was released as obligor when respondent agreed to extend the term of the obligation.

This reasoning is misplaced, because the note herein is not a negotiable instrument. The note reads:

PROMISSORY NOTE

₱400,000.00

RECEIVED FROM ATTY. DIONISIO V. LLAMAS, the sum of FOUR HUNDRED THOUSAND PESOS, Philippine Currency payable on or before January 23, 1997 at No. 144 K-10 St. Kamias, Quezon City, with interest at the rate of 5% per month or fraction thereof.

It is understood that our liability under this loan is jointly and severally [sic].

Done at Quezon City, Metro Manila this 23rd day of December, 1996.[30]

By its terms, the note was made payable to a specific person rather than to bearer or to order[31] -- a requisite for negotiability under Act 2031, the Negotiable Instruments Law (NIL). Hence, petitioner cannot avail himself of the NILs provisions on the liabilities and defenses of an accommodation party. Besides, a non-negotiable note is merely a simple contract in writing and is evidence of such intangible rights as may have been created by the assent of the parties.[32] The promissory note is thus covered by the general provisions of the Civil Code, not by the NIL.

Even granting *arguendo* that the NIL was applicable, still, petitioner would be liable for the promissory note. Under Article 29 of Act 2031, an accommodation party is liable for the instrument to a holder for value even if, at the time of its taking, the latter knew the former to be only an accommodation party. The relation between an accommodation party and the party accommodated is, in effect, one of principal and surety -- the accommodation party being the surety.[33] It is a settled rule that a surety is bound equally and absolutely with the principal and is deemed an original promissor and debtor from the beginning. The liability is immediate and direct.[34]

Third Issue:
Propriety of Summary Judgment or Judgment on the Pleadings

The next issue illustrates the usual confusion between a judgment on the pleadings and a summary judgment. Under Section 3 of Rule 35 of the Rules of Court, a summary judgment may be rendered after a summary hearing if the pleadings, supporting affidavits, depositions and admissions on file show that (1) except as to the amount of damages, there is no genuine issue regarding any material fact; and (2) the moving party is entitled to a judgment as a matter of law.

A summary judgment is a procedural device designed for the prompt disposition of actions in which the pleadings raise only a legal, not a genuine, issue regarding any material fact.[35] Consequently, facts are asserted in the complaint regarding which there is yet no admission, disavowal or qualification; or specific denials or affirmative defenses are set forth in the answer, but

the issues are fictitious as shown by the pleadings, depositions or admissions.[36] A summary judgment may be applied for by either a claimant or a defending party.[37]

On the other hand, under Section 1 of Rule 34 of the Rules of Court, a judgment on the pleadings is proper when an answer fails to render an issue or otherwise admits the material allegations of the adverse partys pleading. The essential question is whether there are issues generated by the pleadings.[38] A judgment on the pleadings may be sought only by a claimant, who is the party seeking to recover upon a claim, counterclaim or cross-claim; or to obtain a declaratory relief. [39]

Apropos thereto, it must be stressed that the trial courts judgment against petitioner was correctly treated by the appellate court as a summary judgment, rather than as a judgment on the pleadings. His Answer[40] apparently raised several issues -- that he signed the promissory note allegedly as a mere accommodation party, and that the obligation was extinguished by either payment or novation. However, these are not factual issues requiring trial. We quote with approval the CAs observations:

> Although Garcias [A]nswer tendered some issues, by way of affirmative defenses, the documents submitted by [respondent] nevertheless clearly showed that the issues so tendered were not valid issues. Firstly, Garcias claim that he was merely an accommodation party is belied by the promissory note that he signed. Nothing in the note indicates that he was only an accommodation party as he claimed to be. Quite the contrary, the promissory note bears the statement: It is understood that our liability under this loan is jointly and severally [sic]. Secondly, his claim that his co-defendant de Jesus already paid the loan by means of a check collapses in view of the dishonor thereof as shown at the dorsal side of said check.[41]

From the records, it also appears that petitioner himself moved to submit the case for judgment on the basis of the pleadings and documents. In a written Manifestation,[42] he stated that judgment on the pleadings may now be rendered without further evidence, considering the allegations and admissions of the parties.[43]

In view of the foregoing, the CA correctly considered as a summary judgment that which the trial court had issued against petitioner.

WHEREFORE, this Petition is hereby *DENIED* and the assailed Decision *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

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[1] *Rollo*, pp. 11-39.

[2] *Id.*, pp. 41-46. Tenth Division. Penned by Justice Renato C. Dacudao, with the concurrence of Justices Ruben T. Reyes (Division chairman) and Mariano C. del Castillo (member).

[3] *Rollo*, pp. 48-49.

[4] CA Decision, p. 6; *rollo*, p. 46.

[5] *Id.*, pp. 2-3 & 42-43.

[6] RTC Decision, p. 4; *rollo*, p. 68. Penned by Judge Eudarlio B. Valencia.

[7] Only Petitioner Garcia appealed the CA Decision. His Petition was deemed submitted for decision on January 30, 2003, upon the Courts receipt of respondents Memorandum signed by Atty. Felipe N. Egargo Jr. Petitioners Memorandum, which was signed by Atty. Carlos G. Nery Jr., was received by the Court on January 16, 2003.

[8] Petitioners Memorandum, pp. 10-11; *rollo*, pp. 97-98. Original in upper case.

[9] Article 1249 of the Civil Code pro*vide*s in part:

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

x x x x x x x x x

[10] Idolor *v.* CA, 351 SCRA 399, 407, February 7, 2001; Agro Conglomerates, Inc. *v.* CA, 348 SCRA 450, 458, December 12, 2000; De Cortes *v.* Venturanza, 79 SCRA 709, 722-723, October 28, 1977; PNB *v.* Mallari and The First Natl. Surety & Assurance Co., Inc., 104 Phil. 437, 441, August 29, 1958.

[11] Tolentino, Civil Code of the Philippines, Vol. IV (1991 ed.), p. 390; De Cortes *v.* Venturanza, *supra*, p. 723.

[12] Garcia *v.* Khu Yek Chiong, 65 Phil. 466, 468, March 31, 1938; De Cortes *v.* Venturanza, *supra*, p. 723.

[13] Babst *v.* CA, 350 SCRA 341, January 26, 2001.

[14] Spouses Bautista *v.* Pilar Development Corporation, 371 Phil. 533, August 17, 1999.

[15] Agro Conglomerates, Inc. *v.* CA, *supra*, pp. 458-459; Security Bank and Trust Company, Inc. *v.* Cuenca, 341 SCRA 781, 796, October 3, 2000; Reyes *v.* CA, 332 Phil. 40, 50, November 4, 1996.

[16] Spouses Bautista *v.* Pilar Development Corporation, *supra*. See also Article 1292 of the Civil Code.

[17] Molino *v.* Security Diners International Corporation, 415 Phil. 587, August 16, 2001.

[18] Petitioners Memorandum, p. 17; *rollo*, p. 104.

[19] Reyes *v.* CA, *supra*; citing Ajax Marketing and Development Corporation *v.* CA, 248 SCRA 222, September 14, 1995.

[20] *Ibid.*; Agro Conglomerates, Inc. *v.* CA, *supra*; Security Bank and Trust Company, Inc. *v.* Cuenca, *supra*.

[21] *Ibid.*

[22] CA Decision, p. 5; *rollo*, p. 45.

[23] Article 1293 of the Civil Code.

[24] Babst *v.* CA, *supra*; citing Testate Estate of Mota *v.* Serra, 47 Phil. 464, February 14, 1925.

[25] Article 1216 of the Civil Code pro*vide*s:

Art. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

[26] PH Credit Corporation *v.* CA, 370 SCRA 155, November 22, 2001; Industrial Management International Development Corp. *v.* National Labor Relations Commission, 387 Phil. 659, May 11, 2000; Inciong Jr. *v.* CA, 327 Phil. 364, June 26, 1996. See also Article 1216 of the Civil Code.

[27] Inciong *v.* CA, 327 Phil. 364, June 26, 1996.

[28] *Ibid.*; PH Credit Corporation *v.* CA, *supra*; Industrial Management International Development Corp. *v.* National Labor Relations Commission, *supra*.

[29] See Articles 1217 and 1218 of the Civil Code.